

## **ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY EMERGENCY RESPONSE PROTOCOL**

This protocol establishes the procedures by which ADEQ will address emergency response situations.<sup>1</sup> While deviation from the protocol may be necessary at times, due to unforeseen circumstances, every effort should be made to adhere to the guidelines established herein.

However, it must be clearly understood that this document should guide, not limit, our actions with regard to emergency situations.

There are two basic situations to which this protocol applies. The first involves an agency representative, typically an inspector, responding to an incident, where immediate action must be taken, but there is no imminent threat to human health and/or the environment, or if such threat does exist, the responsible party is taking appropriate action to address it.

The second situation is one in which there is an imminent threat to human health and/or the environment and/or a lack of action on the part of the responsible party mandates that the ADEQ Director issue an Emergency Order to abate that threat.

The first situation referenced above typically arises when an outside entity, such as the Department of Emergency Management, contacts the Emergency Response Coordinator (ERC) to report the incident. Upon evaluation of the information at hand, the ERC (currently, Richard McDuffee assisted by Richard Merritt) will make a determination as to the need of ADEQ to respond.

If the ERC determines that such response is necessary, he will contact the ADEQ inspector nearest the incident, regardless of media specialization, to respond. The ERC will provide the inspector all known details of the emergency, including location, directions, on-site contacts, any known risks or dangers, and a phone number(s) and pager number where the inspector can reach the ERC.

As soon as reasonably practical after sending the inspector to respond, the ERC will contact someone in the inspector's chain of command to inform of the situation.

When the inspector arrives at the site, he or she will contact the on-site officials and identify himself/herself, gather as much information as possible about the situation and site conditions, and report to the ERC. The inspector will inform the on-site contacts that he/she is there to observe, report, and relay instructions. The inspector's role in these situations is not that of a decision-maker.

Inspectors may encounter situations in which individuals will want to defer to them for decisions on actions to be taken. This is not the inspector's responsibility. Inspectors should only relay instructions provided by the ERC. The inspector should provide as much information as possible about the situation to the ERC, so that informed decisions can be made.

Based upon the experience level of the inspector, there may be instances in which the ERC relies upon the inspector's knowledge and recommendations and/or delegates some decision-making ability to the inspector. However, it is to be clearly understood that the responsibility for handling an emergency situation rests with the ERC and not the responding inspector.

It may be necessary, in certain situations, for the ERC to make a site visit to assess the situation and determine if additional measures need to be taken.

While on site, it is imperative that the inspector does not place himself/herself in harm's way. Inspectors must stay as far away from the actual incident as is necessary to protect themselves.

The ERC will assure, through contact with the inspector and/or on-site officials, that appropriate on-site personnel are taking action to address the situation. Once assured, the ERC will contact someone in the inspector's chain of command and inform him/her of the length of time it is anticipated ADEQ will need someone on site.

Division personnel will provide relief to the inspector if it is determined to be necessary due to the anticipated length of the response. However, if the response is due to a situation normally handled by a division other than that in which the inspector works (e.g., a spill to which an air inspector has responded) the ERC will, if practical, arrange for an inspector from the appropriate division to relieve the responding inspector as soon as reasonably practical.

In any event, the on-site inspector will remain at the scene until he/she has appropriately briefed the inspector relieving him/her.

Within five (5) working days after the end of the response, each inspector involved in the incident will submit to the ERC a completed Notification Report Form which may be found on the G-Drive under Forms<sup>2</sup> and, if requested by the ERC or supervisory personnel, a memorandum detailing his/her activities, observances and findings relative to the incident. The memorandum will be kept on file by the ERC.

The ERC will provide the inspector(s) and other involved parties with an Emergency Response Incident Number for use in filing the report and time sheet coding. All ADEQ personnel involved in the incident shall charge their time to the appropriate Emergency Response Incident Number appropriately, so that cost recovery can occur.

A variation on the above-referenced situation occurs when the inspector is on an inspection or responding to a complaint and discovers a situation he/she believes is an emergency. If this happens, the inspector is to immediately contact his/her supervisor or, if that individual is unavailable, someone in his/her chain of command.

The supervisor will take the information from the inspector and immediately consult with the head of the section, if available. Together, they will assess whether the situation warrants contacting the ERC. The inspector will remain on a site until they decide. If division personnel determine that the situation does not warrant the ERC's involvement, they will contact the inspector with directions about how to proceed.

If, however, the division determines that such involvement is necessary, they will immediately contact the ERC. The ERC will immediately contact the inspector, and the situation will then proceed as described in the preceding paragraphs, with the inspector under the direction of the ERC.

The ERC will then immediately inform the Division Chief and the Director's office by either telephone or e-mail of the status of the situation and the decisions to address the problem.

As previously stated, the second type of situation to which this protocol applies is one in which there is an imminent threat to human health and/or the environment and/or a lack of action on the part of the responsible party that mandates the ADEQ Director issue an Emergency Order to abate that threat. The ERC may determine, during the course of his or her duties, that such a condition exists.

Such determinations may occur during situations such as those described in the preceding paragraphs. The ERC will make a reasonable effort to get the responsible party to take all necessary measures to abate the threat and document that effort in writing.

However, if the responsible party fails to do so, the ERC must immediately contact the Director or his/her designee and inform him/her of the situation.

If the Director or the designee agrees that the situation warrants such action, the ERC will contact the Chief of the Legal Division or his/her designee and instruct that an Emergency Order be drafted. Additionally, this protocol recognizes that in certain situations, the Director may verbally authorize to the ERC an Emergency Order, with the written document to be drafted as soon as reasonably possible following the verbal Order.

If an emergency situation occurs after normal business hours, the ERC will contact the Director or his designee for verbal authorization to proceed. The ERC will confirm this verbal order by e-mail to the Director or his designee and subsequently by written document.

Once so directed, the Chief of the Legal Division or his/her designee will immediately assign an attorney to draft the Emergency Order.<sup>3</sup> The attorney will work, if at all practical, with personnel from the appropriate division(s) to assure that the Emergency Order satisfies the needs of all affected media.

The attorney will assure that the Emergency Order includes provisions for immediate needs, appropriate site remediation after the emergency is over, and collection of any fees expended by ADEQ. When the Emergency Order is drafted, the attorney will provide it to the ERC for final review.

Once the ERC has approved the Emergency Order, he will return it to the attorney. The attorney will then forward the Emergency Order to the Director or designee for signature.

When the Director has signed the Emergency Order, the attorney will take a copy of it to Public Affairs. Public Affairs will prepare and send the document for public notice in the applicable county or local newspaper and will prepare an estimated purchase order for said publication.

The purchase order will be forwarded to the ERC who will forward it to the Fiscal Division. Upon receipt of the bill from the newspaper, the Fiscal Division will appropriately disburse the funds.

The ERC, with the assistance of the Legal Division, if necessary, will assure that the Emergency Order is served on the responsible party in as timely a manner as possible.

The Legal Division will assure that the following personnel receive a copy of the Emergency Order as soon as possible: Director, Chief Deputy Director, Deputy Directors, Division Chief(s), Assigned Attorney, Emergency Response Coordinator, Public Affairs, Commission Secretary, Administrative Hearing Officer, and all affected parties.

The ERC will retain a contractor(s) from the ADEQ list of approved contractors<sup>4,5</sup> and give instructions regarding required actions and statutory cost limitations. If it is anticipated that the cost will exceed ten thousand dollars (\$10,000), the ERC will obtain a disclosure statement from the contractor.

The ERC will prepare an estimated purchase order and forward it, a copy of the Emergency Order, and any required disclosure statements to the Fiscal Division, along with notification of any anticipated unusual expenditures that may require approval by an outside entity, such as State Building Services. The Fiscal Division will work to obtain any necessary approvals, prior to such expenditures being made.

The ERC will maintain contact with the contractor, assuring that work numbers, pager numbers and home numbers are exchanged. The ERC will provide regular updates to the Director or his/her designee of the ongoing status and any need to exceed funding/expenditure limitations.

The Director may take such action as necessary to obtain any required approvals prior to exceeding statutory cost limitations. The on-site inspector will continue to make regular reports to the ERC, until such time as the ERC determines it is no longer necessary to have an inspector on site.

Once the contractor has completed the assigned task, the ERC will obtain an invoice from the contractor, verify its accuracy, and forward the original to the Fiscal Division and a copy to the Attorney who prepared the Emergency Order.

In the event that the cost was not predicted to exceed ten thousand dollars (\$10,000), but did so, the ERC will obtain a disclosure statement from the contractor and forward it to the Fiscal Division along with the approved invoice.

This will be completed within three (3) business days of the ERC's approval of the invoice. The Fiscal Office will assure that the bill is paid in a timely manner. The Attorney who prepared the Emergency Order will be responsible for pursuing cost recovery.

Cost recovery shall be a high priority, and the attorney will work with the appropriate media to assure that all media issues are appropriately addressed.<sup>6</sup> The ERC will develop and maintain an annual tracking of costs expended by ADEQ for of all emergency response actions undertaken by ADEQ and related cost recovery efforts and will submit a quarterly report to the Director, Legal Division, and Fiscal Division.

<sup>1</sup> Procedures for the Regulated Storage Tanks Division (RST) differ slightly from the procedures outlined herein, and this protocol recognizes and incorporates those differences. Specifically, monies for RST emergency responses come from two sources which are RST specific B the federal LUST Trust Fund and the Arkansas Petroleum Storage Tank Trust Fund.

The federal funds may be utilized for work associated with regulated underground storage tanks only. The state trust fund may be utilized for work associated with either regulated underground or aboveground storage tanks.

An Emergency Order does not have to be issued in order for monies to be released from these funds. Additionally, RST has established procedures whereby a contractor(s) is on call at all times to address RST-specific situations, if necessary. Consequently, RST's procedures relative to use of these funds are as follows:

During a routine inspection, an inspector can discover site conditions that warrant immediate action on the part of the responsible party to stabilize an environmental condition that threatens the public health and/or safety.

If, after giving the responsible party an opportunity to respond, they refuse or do not respond in a timely manner, procedures will be initiated to contact and mobilize the RST Division on-call contractor to take immediate action to stabilize the situation.

During a complaint investigation or leaking underground storage tank investigation (LUST investigation) site conditions may warrant emergency action to protect the public health and/or safety. Mobilization of the RST Division on-call contractor will occur if the responsible party refuses to respond or does not respond in a timely manner.

However, this protocol establishes that, if at any time during the course of performing its duties, the RST Division utilizes its on-call contractor(s), the Division Chief or his/her designee will notify the ERC as soon as reasonably possible so that the ERC may track the response.

Additionally, within five (5) working days after the end of the response, each RST inspector involved in the incident will submit, to the ERC, a memorandum detailing his/her activities, observances and findings relative to the incident, along with the Notification Report Form which may be found on the G-Drive under Forms. The memorandum will be kept on file by the ERC.

If, at any time during the course of performing its duties, the RST Division believes that there is imminent threat to human health and/or the environment and/or the responsible party is not addressing the situation appropriately, the appropriate Division personnel are to immediately contact the ERC.

At this point, the matter will be handled by the ERC and all involved agency personnel according to the standard agency-wide protocol described above.

The RST Division will submit the name(s) of its contractor(s) to the ERC and shall participate in the review of standard emergency order language as outlined herein.

<sup>2</sup> Within thirty days of the effective date of this policy, the Chief of the Computer Services Division will assure that the Notification Report Form (Attachment A) is placed on the G-Drive under Forms.

<sup>3</sup> Within thirty days of the effective date of this policy, the Chief of Legal will assign an attorney(s) to draft standard language to be included in emergency orders for spills, fires, and natural disasters such as tornados and ice storms.

The assigned attorney(s) will draft the language, in concert with the affected Divisions, and forward it to the Director's Office for approval within thirty days of assignment. After the 60th day following the effective date of this policy, the standard language shall be used in each Emergency Order as appropriate.

<sup>4</sup> There are occasions, such as natural disasters, when the Emergency Order issued by the Director does not require retaining a contractor. Examples include allowing counties to burn debris from tornados or ice storms. In such events, those sections of the protocol dealing with on-site inspectors, contractors, and cost recovery may not be applicable.

However, the process flow will remain the same. Violations of this type of Emergency Order will be referred to the enforcement section of the appropriate division.

<sup>5</sup> Within 15 days of the effective date of this policy, all Divisions will forward the names, addresses, phone numbers and specializations of contractors used for emergencies to the ERC. The ERC will then work with the Legal Division and will develop a criteria list for selecting contractors, including necessary documents to ensure that the contractor has workers' compensation insurance.

The criteria list will be developed within 45 days of the effective date of this policy. The ERC will then contact those contractors to assure that they meet the requirements of the criteria list and obtain a W-9 form from each.

This shall be accomplished within thirty days of the completion of the criteria list. The ERC will then forward a list of the contractors who have met the criteria, along with their W-9 forms, to the Fiscal Division. The Fiscal Division will assure that those contractors are entered into the vendor system within thirty days of receipt of the list.

After the 120th day following the effective date of this policy, the ERC will only retain contractors on the list. New contractors may be added, but only after completing the process described herein. Media divisions will provide updates to the list to the ERC regularly, and the ERC shall work with the Computer Services Division to assure that an updated list is on the G-Drive. This listing will be reviewed every two (2) years.

<sup>6</sup> Within thirty days of the effective date of this protocol, each media Division Chief will select a staff member and an alternate to serve as contacts during situations requiring an Emergency Order. The names will be forwarded to the Director, the ERC, and the Chief of Legal.

\*\*\*\* This protocol shall be distributed to all ADEQ staff, and the ERC shall assure that the Department of Emergency Management and all other affected organizations receive a copy to be distributed to affected staff members.

## **EMERGENCY RESPONSE QUICK REFERENCE OUTLINE**

- I. First situation in which the protocol is applicable
  - A. Immediate action is known to be required, but imminent threat to human health and/or the environment is not present
    1. ERC contacts inspector nearest incident, regardless of media specialization
    2. ERC provides inspector all known details of emergency, contact numbers, and instructions
    3. ERC contacts inspector's chain of command and informs them of situation
    4. Inspector goes to site, contacts on-site officials, and gathers information
    5. Inspector reports to ERC, advises ERC of situation, and relays ERC's instructions for remedial actions to on-site officials
    6. ERC assures, through inspector, that appropriate remedial action is taken
    7. ERC contacts inspector's chain of command and informs them of anticipated time the inspector of the appropriate division will be needed, assuring that appropriate media inspector is on site
    8. Inspector's chain of command arranges for relief if necessary, and inspector briefs inspector providing relief
    9. Inspector(s) provides a memorandum detailing observations and activities at the site, along with a Notification Report Form, to the ERC within 5 working days after response ends
  - B. Immediate action believed by inspector to be required based on observation
    1. Inspector immediately reports observation to supervisor
    2. Supervisor immediately discusses with head of section
    3. Supervisor and section head determine if situation warrants ERC's involvement
      - a. If ERC's involvement unnecessary, supervisor contacts inspector with instructions
      - b. If ERC's involvement required, supervisor and/or section head contact ERC with the information
        - i. ERC contacts inspector with instructions

- ii. Action proceeds per I (A) (5-9) above
- iii. ERC informs Division Chief and Director's office of the status of the situation and the decisions to address the problem.

II. Second situation in which protocol applies

A. Imminent threat to human health and/or the environment exists and/or responsible party fails to take appropriate action

1. ERC determines that such a situation exists
2. ERC documents, in writing, attempts to get responsible party to address matter
3. If responsible party fails to address matter, ERC contacts Director or designee, and informs of situation
4. If Director or designee agrees with ERC's assessment, Director or designee contacts Chief of Legal or designee and instructs that Emergency Order (EO) be drafted
5. Chief of Legal or designee assigns attorney to draft EO
6. Attorney works with appropriate division(s) to address media needs in EO
  - a. Attorney assures EO addresses immediate needs
  - b. Attorney assures EO addresses remediation after emergency is over
  - c. Attorney assures EO addresses collection of monies expended by ADEQ in addressing emergency
7. Attorney gives the EO to the ERC for final review
8. ERC immediately reviews the EO and, once satisfied, returns it to attorney
9. Attorney takes EO to Director or designee for signature

B. Emergency Order Signed by Director

1. Attorney takes signed copy of EO to Public Affairs
2. Public Affairs prepares and sends EO for public notice
3. Public affairs prepares estimated purchase order for publication and forwards it to the ERC
4. ERC forwards estimated purchase order to Fiscal Division
5. Fiscal disburses funds upon receipt of bill
6. ERC assures EO is served on responsible party

7. Legal Division assures appropriate personnel receive copy of EO
  8. ERC retains ADEQ approved contractor
    - a. ERC gives contractor instructions regarding required actions
    - b. ERC informs contractor of statutory cost limitations
    - c. ERC obtains disclosure statement from contractor if costs are predicted to exceed \$10,000, and forwards it to Fiscal
    - d. ERC prepares estimated purchase order and forwards it to Fiscal, along with a copy of the EO
    - e. ERC notifies Fiscal of any anticipated unusual expenditures requiring approval by outside entity
    - f. Fiscal coordinates obtaining necessary approvals
  9. ERC maintains contact with contractor and on-site inspector
  10. ERC provides updates to Director or designee
  11. ERC determines agency need for on-site inspector
- C. Emergency appropriately addressed
1. ERC obtains invoice from contractor and verifies accuracy
  2. ERC sends original approved invoice to Fiscal, along with disclosure statement if necessary
  3. ERC sends copy of invoice to Attorney who prepared Emergency Order
  4. Attorney pursues cost recovery